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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. [redacted] 146

JOAN FLORES DELANEY,
Petitioner,

vs.

UNITED SERVICES LIFE INSURANCE COMPANY,
Respondent.

PETITIONER'S MOTION TO STRIKE THE APPENDIX AND UNNUMBERED PARAGRAPH TWO OF PAGE FOUR OF RESPONDENT'S ANSWER

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OCTOBER TERM, 1965

No. 1326

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Respondent.

PETITIONER'S MOTION TO STRIKE THE APPENDIX AND UNNUMBERED PARAGRAPH TWO OF PAGE FOUR OF RESPONDENT'S ANSWER

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, JOAN FLORES DELANEY, a widow prays that this her MOTION TO STRIKE THE APPENDIX AND UNNUMBERED PARAGRAPH TWO OF PAGE FOUR OF RESPONDENT'S ANSWER be granted and sustained by this Honorable Court for the following reasons, to-wit:

Said unnumbered paragraph 2 of page 4 of Respondent's Answer printed and filed herein reads as follows:

"The original and each succeeding application for Stay of Mandate[2] filed by Respondent with the Court of Appeals pointed out and called the Court's attention to the case of *Paul Revere Life Insurance Co.* v. *First National Bank in Dallas* pending before another panel of the Court and emphasized that the decision in *Paul Revere* could, as it ultimately did, have an important bearing on this case."

Said quoted paragraph above contains a notation to see footnote No. 2 reading as follows:

"[2]Copy of original Application for Delay of Mandate appended as Appendix I."

Said footnote No. 2 refers to Appendix I, page 11, Respondent's Answer and purports to be a copy of the original "Application for Delay of Mandate" as filed in the Fifth Circuit Court.

Petitioner has obtained a supplemental record, properly certified by the Clerk of the Fifth Circuit Court of Appeals which has been filed herein. Said supplemental record, pages 1 through 5, will show this Honorable Court that the above-quoted statements and Appendix contained in Respondent's Answer are incorrect, are misleading and in irreconcilable conflict with the supplemental record as certified by the Clerk of the Fifth Circuit Court of Appeals since said Application and Stay Order were for Certiorari purposes only, and that this Motion should be in all things granted and that said unnumbered paragraph 2, page 4 and its footnote No. 2 as well as the Appendix to be found on pages 11 through 13 of Respondent's Answer should be stricken and should not be considered by this Honorable Court.

Each Stay of Mandate granted by the Fifth Circuit Court of Appeals beginning with the one found in the supplemental record filed herein up to, and including the Stay of Mandate signed Feb. 2, 1963, which stayed the Mandate until March 6, 1963, was issued under authority of Title 28, U.S.C.A. Section 2101 (c). Since Respondent's Motion for Rehearing was overruled on the 26th day of October 1962 R. P. 105, it is elementary that the order of Judge Wisdom dated Feb. 2, 1963, was granted and entered in violation of the above-quoted statute, since only a Justice of this Honorable Court can legally issue such an order after 90 days have elapsed.

WHEREFORE, your Petitioner, JOAN FLORES DELANEY, a widow prays the Court to grant this her MOTION TO STRIKE THE APPENDIX AND UNNUMBERED PARAGRAPH TWO OF PAGE FOUR OF RESPONDENT'S ANSWER, because of the obvious conflict between the outlined portion of said Answer and the certified supplemental record filed herein.

Respectfully submitted,

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